

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,

Plaintiff/Counter-
Defendant,

v.

ILLUMINA, INC.,

Defendant/Counter-
Plaintiff.

C.A. No. 04-901-JJF

**AFFYMETRIX, INC.'S MOTION FOR (1) SUMMARY JUDGMENT
ON ILLUMINA'S COUNTERCLAIM OF INTENTIONAL INTERFERENCE
WITH ACTUAL AND PROSPECTIVE ECONOMIC ADVANTAGE AND
(2) SUMMARY ADJUDICATION OF PORTIONS OF ILLUMINA'S
COUNTERCLAIM FOR UNFAIR BUSINESS PRACTICES; OR, IN THE
ALTERNATIVE, FOR BIFURCATION OF THESE COUNTERCLAIMS**

Pursuant to Rule 56(c), Affymetrix moves for summary judgment on Illumina's counterclaim of intentional interference with actual and prospective economic advantage. Affymetrix also moves for summary adjudication of portions of Illumina's counterclaim for unfair business practices. In the alternative, Affymetrix moves to bifurcate the counterclaims from the issues to be presented to the jury at the trial set to commence on October 16, 2006.

A proposed form of Order is attached.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Maryellen Noreika

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July 14, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	C.A. No. 04-901-JJF
)	
ILLUMINA, INC.,)	
)	
Defendant/Counter-Plaintiff.)	

[PROPOSED] ORDER GRANTING MOTION OF AFFYMETRIX, INC. FOR (1) SUMMARY JUDGMENT OF ILLUMINA, INC.'S COUNTERCLAIM OF INTENTIONAL INTERFERENCE WITH ACTUAL AND PROSPECTIVE ECONOMIC ADVANTAGE; AND (2) SUMMARY ADJUDICATION OF PORTIONS OF ILLUMINA, INC.'S COUNTERCLAIM FOR UNFAIR BUSINESS PRACTICES

WHEREAS Affymetrix, Inc. (Affymetrix) has moved for (1) Summary Judgment on Count IX of the First Amended Answer and Counterclaims of Illumina, Inc. (Illumina) and (2) Summary Adjudication of those portions of Count VIII of Illumina's First Amended Answer and Counterclaims that are not premised on violations of antitrust laws;

IT IS HEREBY ORDERED upon consideration of the evidence and for good cause shown that:

(1) Affymetrix's Motion for Summary Adjudication of those portions of Count VIII of Illumina's First Amended Answer and Counterclaims that are not premised on violations of antitrust laws is GRANTED; and

(2) Affymetrix's Motion for Summary Judgment of Count IX of Illumina's First Amended Answer and Counterclaims is GRANTED.

SO ORDERED:

Date

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2006, I electronically filed the foregoing document using CM/ECF which will send notification of such filing(s) to the following:

Richard K. Herrmann
Morris, James, Hitchens & Williams LLP

I also certify that copies were caused to be served on July 14 2006 upon the following in the manner indicated:

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